CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	✓	Force	$\overline{\mathbf{V}}$	Discourt.	V	U.S.
Sara Asselman		Squad #04	202204339	☑	Abuse		O.L.		Injury
Incident Date(s)		Location of Incident:		T	18 Mo. SOL]	Precinct:
Saturday, 07/02/2022 11:25 PM, Thursday, 02/02/2023 10:37 AM		East Gun Hill Road and Barnes Avenue; 100 Church Street, CCRB offices			1/2/2024			47	
Date/Time CV Reported		CV Reported At:	How CV Reported	:	Date/Tim	e Rec	eived at CC	RB	
Sun, 07/03/2022 11:08 PM		CCRB	On-line website		Sun, 07/0	3/202	2 11:08 PM	[
Complainant/Victim	Type	Home Addre	ess						
Witness(es)		Home Addre	MCC.						
withess(es)		Home Addre	ess						
Subject Officer(s)	Shield	TaxID	Command						
1. PO Charles Hillery	07731	944653	047 PCT						
2. LT Amanda Szot	00000	946306	047 PCT						
3. PO Justin Calderon	21964	972438	047 PCT						
4. PO Omar Habib	00748	942899	047 PCT						
Witness Officer(s)	Shield N	o Tax No	Cmd Name						
1. SGT Omair Butt	01284	952517	047 PCT						
2. PO Jeffrey Reisenauer	13405	956195	FTU 10						
3. PO Mark Fleming	24493	941763	047 PCT						
4. SGT David Verna	02790	953527	047 PCT						
Officer(s)	Allegatio	on			Inv	estiga	ator Recor	nme	endation
A . PO Charles Hillery		olice Officer Charles Hi se of a recording device.		n § 87((2)(b)				
B . PO Justin Calderon	Abuse: P § 87(2)(b)	Abuse: Police Officer Justin Calderon interfered with							
C . PO Charles Hillery		esy: Police Officer Char cously toward § 87(2)(b)	les Hillery acted						
D . PO Charles Hillery		Discourtesy: Police Officer Charles Hillery spoke discourteously to \$87(2)(6)							
E . PO Justin Calderon		esy: Police Officer Justin	n Calderon acted						
§ 87(2)(g), § 87(4-b)									
G . PO Omar Habib		rolice Officer Omar Hab rn camera.	ib improperly used	his					
H . PO Charles Hillery		Force: Police Officer Charles Hillery used physical force against \$\s^{\\$7(2)(b)}\$							
I . PO Charles Hillery	Force: Po	olice Officer Charles Hil 37(2)(6)	llery used physical f	orce					
J . PO Charles Hillery		olice Officer Charles Hi	illery damaged \$87(2)((b)					

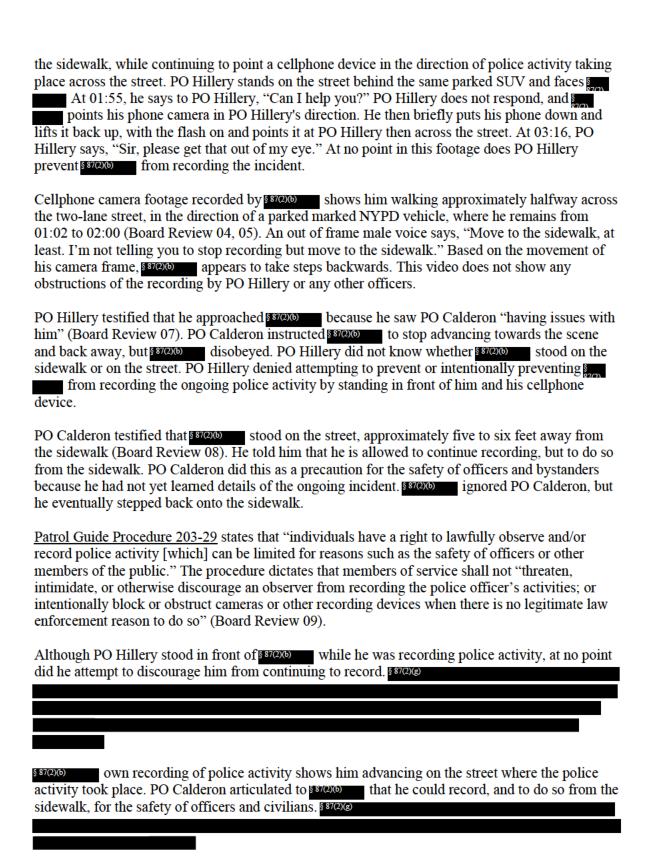
Officer(s)	Allegation	Investigator Recommendation
K . PO Charles Hillery	Force: Police Officer Charles Hillery used physical force against \$87(2)(b)	
L . PO Charles Hillery	Abuse: Police Officer Charles Hillery threatened to arrest § 87(2)(b)	
M . LT Amanda Szot	Abuse: Lieutenant Amanda Szot threatened § 87(2)(6) with the use of force.	
N . PO Charles Hillery	Untruthful Stmt.: Police Officer Charles Hillery provided a false official statement to the CCRB.	
§ 87(2)(g), § 87(4-b)		

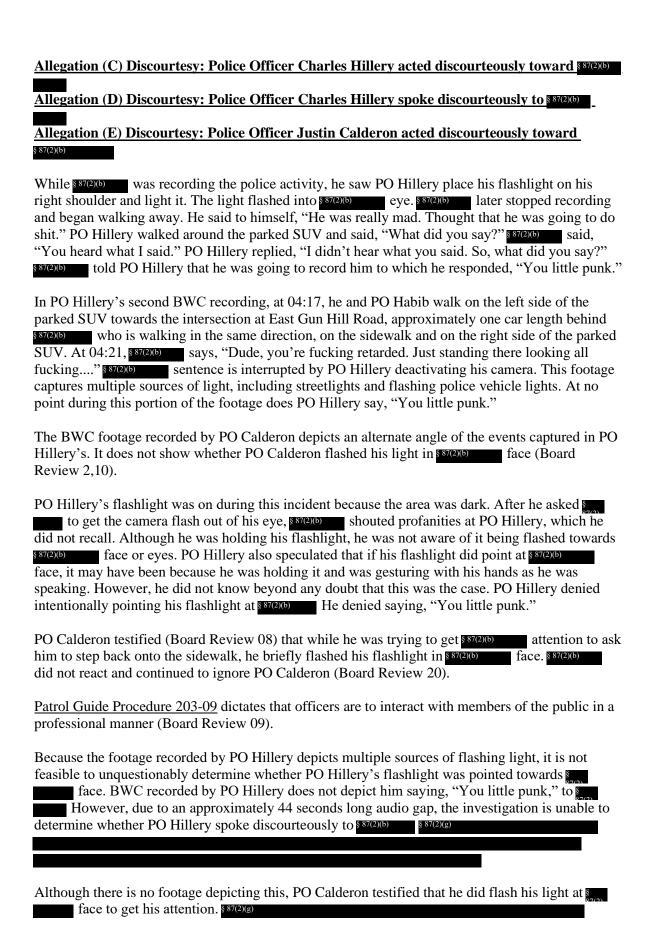
Case Summary

filed this complaint on July 3, 2022, at 11:08pm, via the CCRB's website. On July 2, 2022, at approximately 11:25pm, in the vicinity of East Gun Hill Road and Barnes Avenue, in The Bronx, PO Charles Hillery and PO Justin Calderon, of the 47th Precinct, interfered use of a recording device (Allegations A and B: Abuse of Authority, \$87(2)(g) PO Hillery then flashed his light in \$87(2)(b) face and said to him, "You little punk" (Allegations C and D: Discourtesy, \$87(2)(g) PO Calderon pointed his flashlight at § 87(2)(b) face (Allegation E: Discourtesy, § 87(2)(g) PO Hillery and his partner, PO Omar Habib, also of the 47th Precinct, turned off their body-worn cameras (BWCs) before approaching \$87(2)(b) (Allegation F: Abuse of Authority, \$87(2)(g) ■ (Allegation G: Abuse of Authority, § 87(2)(g) PO Hillery pressed his chest against § 87(2)(6) (Allegation H: Force, § 87(2)(g) He then slapped his phone out of his hand (Allegation I: Force, \$87(2)(g) causing it to fall to the ground and break (Allegation J: Abuse of Authority, § 87(2)(g) PO Hillery twisted \$87(2)(b) arm (Allegation K: Force, \$87(2)(g) He then said, "Now you're going to jail" (Allegation L: Abuse of Authority, \$87(2)(9) Amanda Szot, of the 47th Precinct, said to \$\frac{85(2)(5)}{2} \tag{"Stop moving or I will taser you" (Allegation M: Abuse of Authority, § 87(2)(g) On February 2, 2023, PO Hillery provided a false official statement to the CCRB (Allegation N: Untruthful Statement, § 87(2)(g) This incident concluded with \$87(2)(b) being removed to the stationhouse and released with a C-Summons for harassment (Board Review 01). The CCRB obtained BWC (Board Review 02, 03) and cellphone footage of this incident (Board Review 04, 05). **Findings and Recommendations** Allegation (A) Abuse of Authority: Police Officer Charles Hillery interfered with \$87(2)(6) use of a recording device. Allegation (B) Abuse of Authority: Police Officer Justin Calderon interfered with [887(2)(b)] use of a recording device. On July 2, 2022, at approximately 11:25pm, §87(2)(b) was walking his sister's dog along Barnes Avenue between East Gun Hill Road and Magenta Street in the Bronx (Board Review 06). noticed ongoing police activity and began recording it using his cellphone. S87(2)(b) stood on the street next to the trunk of a parked white SUV. PO Hillery approached \$\frac{87(2)(6)}{2} \tag{37(2)(6)} and stood approximately two to three feet away from him, while facing him. They did not interact. \$87(2)(6) continued to record video of the police activity with his flashlight on. §87(2)(b) believed PO Hillery stood directly in front of him to block him from recording the ongoing incident. In PO Hillery's second BWC recording, at 00:25, \$87(2)(b) is standing on the street, behind a parked white SUV (Board Review 02, 03). PO Calderon approaches \$87(2)(b) direction and

speaks to him. This portion of the footage does not have audio. At 00.35 §87(2)(6)

is standing on

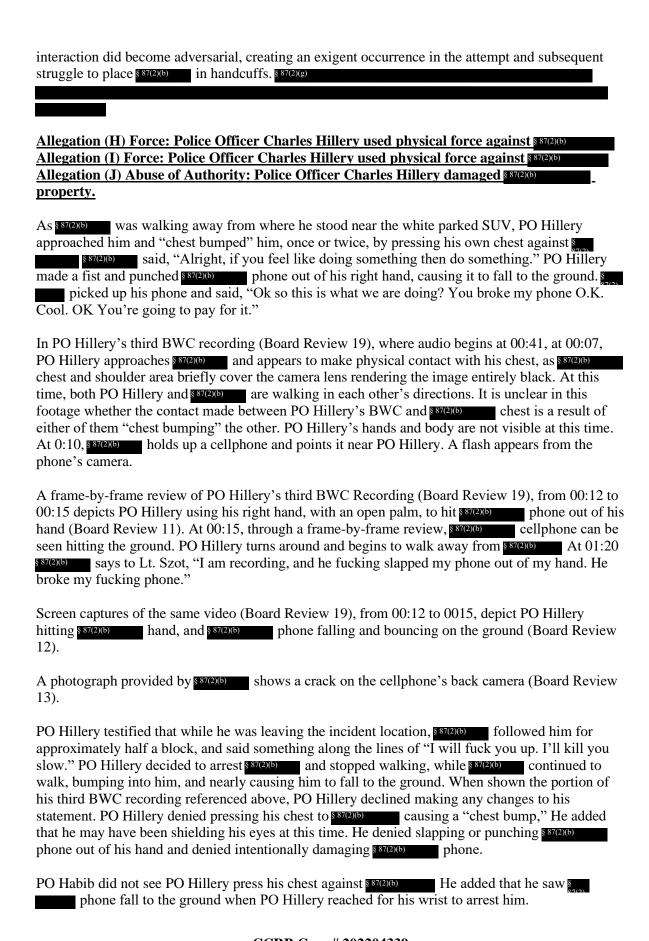




§ 87(2)(g)
§ 87(2)(g), § 87(4-b)
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Allegation (G) Abuse of Authority: Police Officer Omar Habib improperly used his body-
worn camera.
§ 87(2)(g), § 87(4-b)
The same request yielded two separate recordings made by PO Habib. The final frame of the first recording has the real time timestamp 23:32:29. It depicts him walking behind PO Hillery, on the street, next to the driver's side of parked white SUV next to which initially stood. At activation, which is at the video player's 00:59 mark, the first frame of his second recording has real time timestamp 23:34:32, indicating that two minutes and three seconds elapsed between the first and second recordings, during which PO Habib interacted with and participated in his apprehension.
S 07(1)(A) S 07(41)
§ 87(2)(g), § 87(4-b)
PO Habib testified that he ended his first recording because he believed his involvement in the initial incident was complete. He delayed reactivating his BWC during apprehension until it became safe for him to do so. He denied intentionally deactivating his BWC.
Patrol Guide procedure 212-123 states that it is mandatory for members of service to activate their BWC prior to engaging in "public interactions that escalate and become adversarial." It further states, "In the event of an unanticipated or exigent occurrence, activate the BWC as soon as it is feasible and safe to do so after taking necessary police action to preserve human health and safety."

PO Habib testified that he only re-activated his BWC once it was safe to do so, after properties apprehension was complete. Based on the BWC footage obtained, it is unclear whether PO Habib engaged in an interaction with strong at the same time as PO Hillery. The footage shows that the

§ 87(2)(g), § 87(4-b)

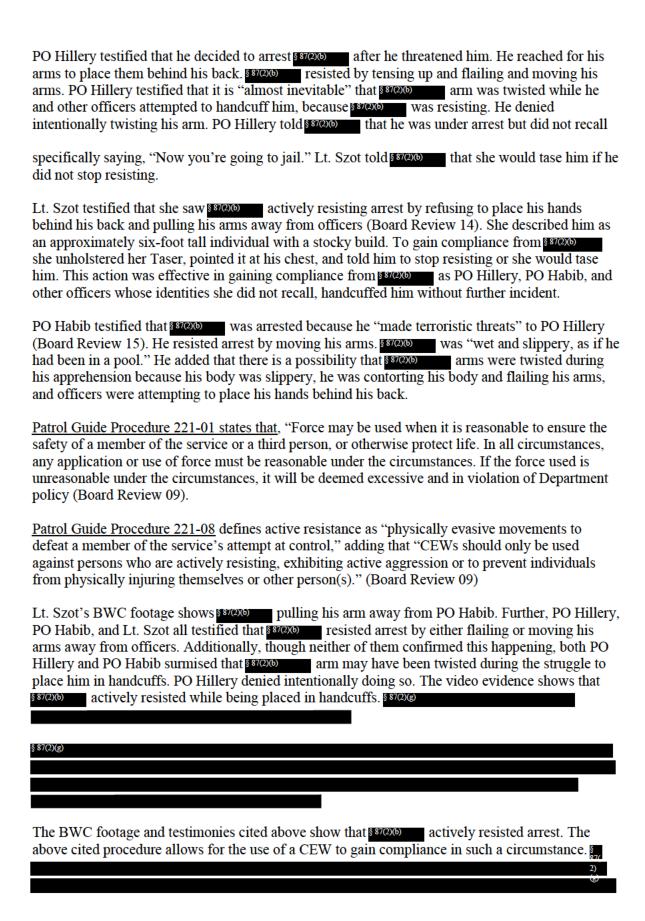


<u>Patrol Guide Procedure 221-01 states that</u>, "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy (Board Review 09).

§ 87(2)(g)
PO Hillery's third BWC recording, when reviewed frame by frame from 00:12 to 00:15, depicts him using an open palm to hit hand, where his phone is held, causing the phone to immediately fall to the ground. This version of events is akin to service testimony. Within sixty seconds of this part of the incident, service informs Lt. Szot that PO Hillery slapped his phone out of his hands causing the phone to break. This statement is also consistent with the events captured in PO Hillery's BWC, and the photograph provided by service
Allegation (K) Force: Police Officer Charles Hillery used physical force against STOYO Allegation (L) Abuse of Authority: Police Officer Charles Hillery threatened to arrest STOYO
Allegation (M) Abuse of Authority: Lieutenant Amanda Szot threatened with the use of force.
After he hit strong phone to the ground, PO Hillery began to walk away from him. He then walked back to him, grabbed his left arm, twisted it, and said, "Now you're going to jail." strong felt his arm twist a second time. He testified that these events happened fast, and he was unable to determine which officers took which actions while apprehending him. While officers were attempting to handcuff him, Lt. Szot approached strong and said, "Stop resisting arrest or I'm going to tase you. Stop."
BWC footage recorded by PO Hillery shows him walking away from street towards East Gun Hill Road at 00:15. At 00:26, PO Hillery walks back in direction where they meet at the intersection of Barnes Avenue and East Gun Hill Road a few feet away from the sidewalk. At 00:34 PO Habib is seen holding by his right elbow. It also briefly shows PO Hillery holding left wrist. A struggle between and PO Hillery, PO Habib, and other officers ensues. This renders officers' actions indiscernible for the following thirty seconds. This footage does not show PO Hillery telling street "Now you're going to jail."
In BWC footage recorded by Lt. Szot, at 01:36 Lt. Szot approaches and says, "Alright, relax," She points her CEW towards him, as he is pulling his right arm away from PO Habib. She says, "Stop. I'm gonna taser you. I'm going to taser you. Stop." She adds while continuing to

point her CEW in his direction, "Don't move. Don't move. Put your hands behind your back, or I

will taser you." (Board Review 2, 10)



Allegation (N) Untruthful Statement: Police Officer Charles Hillery provided a false official statement to the CCRB.

Footage recorded by PO Hillery's BWC, prior to its activation, depicts him hitting phone with his hand, causing it to fall to the ground and break (Board review 19).

On February 2, 2023, while being interviewed at CCRB regarding this complaint, PO Hillery was presented with the above-summarized BWC footage. Regarding the frame that shows his hand hitting hand and phone, he stated that he was unsure whether that constituted contact. He added that that frame could represent a lot of possibilities because at this time of the incident, he was shielding his eyes. PO Hillery did not know what actions he took to remove light from shining in his eyes. He fully denied taking the actions depicted in the BWC footage (Board Review 21). He did not want to make any amendments to his statement following the review of this video. He was provided with the opportunity to review this footage additional times, which he declined.

<u>Patrol Guide Procedure 304-10</u> prohibits member of service from "intentionally making a false official statement," which it defines as "an intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation."

PO Hillery's statement was inconsistent with the events depicted in the buffer portion of his BWC
footage. He was provided ample opportunity to alter his statement after he was confronted with the evidence. PO Hillery continued to deny that the events depicted took place.
§ 87(2)(g), § 87(4-b)
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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which seems has been a party (Board Review 16).
- Lt. Amanda Szot has been a member of service for fifteen years and has been a subject in four CCRB complaints and ten allegations, of which two were substantiated.:

- 202003689 involved substantiated allegations of Abuse of Authority against Lt. Szot. The Board recommended Command Discipline A and the NYPD imposed no penalty.
- 202105329 involved substantiated allegations of Abuse of Authority against Lt. Szot. The Board recommended Formalized Training and the NYPD has not yet imposed discipline.
- PO Charles Hillery has been a member of service for fifteen years and has been a subject in four CCRB complaints and seventeen allegations, of which five were substantiated.:
 - 201802015 involved substantiated allegations of Abuse of Authority, Discourtesy and Offensive language against PO Hillery. The Board recommended Command Discipline A and the NYPD imposed no penalty.
- PO Omar Habib has been a member of service for sixteen years and has been a subject in six CCRB complaints and seventeen allegations, of which eight were substantiated.:
 - 200914904 involved substantiated allegations of Force against PO Habib. The Board recommended Charges and Specifications and the NYPD imposed thirty-five vacations days and a five-day suspension.
 - 201602469 involved substantiated allegations of Abuse of Authority against PO Habib. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A
 - 201801230 involved substantiated allegations of Force and Abuse of Authority against PO Habib. APU prosecuted the case and NYPD imposed 365 days of Dismissal Probation.
 - 201902427 involved substantiated allegations of Discourtesy against PO Habib. The Board recommenced Formalized Training and the NYPD imposed Instructions.
- PO Justin Calderon has been a member-of-service for one year and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 29, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (Board Review 17).

[3 01/57(0)] [38 00/1	(A) [[
Squad:	#4		
Investigator:	Sara Asselman Signature	Inv. Sara Asselman Print Title & Name	03/08/2023 Date
Squad Leader:	Raquel Velasquez Signature	IM Raquel Velasquez Print Title & Name	03/10/2023 Date
Reviewer:	Signature	Print Title & Name	Date